

OGC Has Reviewed

21 MAR 1975

MEMORANDUM FOR THE RECORD

SUBJECT: [ ] - Export Control Violation

1. On 26 February, at [ ] request, I met with [ ] (DD/OER) and [ ] members of his staff, to discuss the Department of Commerce's request that [ ] appear as an expert witness in the compliance proceedings to be initiated against [ ].

2. It appears that [ ] has been charged with violating Commerce export control regulations in that it did export to [ ] certain proscribed items, to wit, magnetic disc recording heads. Commerce's interest in [ ] stems from a memorandum (CONFIDENTIAL) he had prepared which analyzes [ ] capacity to produce the proscribed items.

3. [ ] stated that it was their position that [ ] should not appear. His reasons were (1) Commerce can prove its case against [ ] without [ ] help, and (2) certain information contained in the [ ] paper had been obtained from confidential industry sources. [ ] reported that he had just received a call from a [ ] a Commerce type, who, in pressing for a decision regarding [ ] availability, indicated that if it were negative "they would have to go higher." In briefing [ ] later on the substance of this meeting, I suggested that we advise Commerce that [ ] would not be available. I undertook to call Commerce the next day to give it the Agency's decision, after first determining whether it should be imparted to one [ ].

4. During midmorning on 27 February, [ ] called to say that the matter of [ ] participation as a Commerce witness had been raised at the morning meeting - the decision had been in the negative. Early that afternoon I received a call from an individual identifying himself as Dick Hull, Assistant General Counsel, Department of Commerce. He allowed that he understood that I had some familiarity with a compliance proceeding Commerce was about to initiate and of its need for our [ ] to appear as a witness.

5. In an attempt to impart the significance of Commerce's case against [ ] went on to tick off a number of points which only served to buttress the Agency's negative decision. According to Hull, (1) [ ]

SUBJECT: [REDACTED] - Export Control Violation

has already admitted to repeated violations of Commerce's export regulations, (2) the case was one of extreme importance and Commerce intends to publicize its findings as a deterrent to others, (3) Commerce has discussed possible criminal prosecution with Justice, (4) [REDACTED] is being represented by an extremely capable law firm. When I asked the reason for [REDACTED] presence, he said they intended to throw the book at [REDACTED] and, in anticipation of a defense that the recording discs were not of strategic value, they needed [REDACTED] testimony on the point. The testimony of [REDACTED], an Agency employee, was represented as being "more credible." In response to my statement that [REDACTED] testimony would be based in part on classified information, Hull stated he would have no difficulty in arranging with the Hearing Examiner to have the testimony restricted to unclassified information. I told him that our experience had demonstrated that it is not possible to so restrict testimony once the offer of proof is made.

6. When Hull asked if an Agency decision had been made, I asked if he were the proper party to receive it. In this connection, I relayed the substance of [REDACTED] telephone call to [REDACTED]. Hull agreed that [REDACTED] remark had indeed been unfortunate. In response to Hull's representation that he was the proper party, I told him that the decision was in the negative. I explained that it was based on our interest in protecting our sources of information, plus our concern over [REDACTED] possible involvement in a subsequent criminal prosecution. When Hull undertook to assure me that he would not permit this to happen, I suggested that Justice might feel differently on that point. Hull then asked if [REDACTED] could provide an unclassified affidavit. In response to my question of how he would explain [REDACTED] absence, he replied somewhat lamely, "well, don't you people go overseas at times."

7. While Hull expressed his disappointment in our decision, he seemed to accept it with good grace.

[REDACTED]

Associate General Counsel

cc: OGC